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United States
Department of Defense



Distribution of Funds and the Validity of Obligations
for the Management of the Afghanistan Security
Forces Fund Phase II

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Acronyms and Abbreviations

AFCEE	Air Force Center for Engineering and the Environment
ANA	Afghan National Army
ANP	Afghan National Police
ASF	Afghan Security Forces
CECOM	Communications-Electronics Command
CSTC-A	Combined Security Transition Command-Afghanistan
DSCA	Defense Security Cooperation Agency
FMR	Financial Management Regulation
FMS	Foreign Military Sales
GAO	Government Accountability Office
IG	Inspector General
JMC	Joint Munitions Command
LOA	Letter of Offer and Acceptance
MIPR	Military Interdepartmental Purchase Request
TACOM LCMC	TACOM Life Cycle Management Command
USACE	U.S. Army Corps of Engineers
USASAC-NC	U.S. Army Security Assistance Command-New Cumberland
U.S.C.	United States Code
USCENTCOM	U.S. Central Command



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
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February 5, 2009

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE
(COMPTROLLER)/DoD CHIEF FINANCIAL OFFICER
COMMANDER, U.S. CENTRAL COMMAND
ASSISTANT SECRETARY OF THE AIR FORCE
(FINANCIAL MANAGEMENT AND COMPTROLLER)
DIRECTOR, DEFENSE SECURITY COOPERATION AGENCY
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Distribution of Funds and the Validity of Obligations for the Management of the
Afghanistan Security Forces Fund Phase II (Report No. D-2009-050)

We are providing this report for your information and use. No written response to this report was required, and none was received. Therefore, we are publishing this report in final form.

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-8863 (DSN 664-8863). If you desire, we will provide a formal briefing on the results.

A handwritten signature in dark ink, reading "Donald A. Bloomer", is positioned above the printed name.

Donald A. Bloomer
Director
Joint and Overseas Operations



Results in Brief: Distribution of Funds and the Validity of Obligations for the Management of the Afghanistan Security Forces Fund Phase II

What We Did

We determined whether DoD obligated \$1.3 billion from the Afghanistan Security Forces Fund in accordance with legal provisions for assisting the Afghan Security Forces and with appropriations law.

What We Found

We validated that DoD obligated \$1.3 billion in accordance with legal provisions to assist the Afghan Security Forces included in Public Laws 109-13, 109-234, and 109-289. These three public laws make funds available to the Secretary of Defense or the Secretary's designee (currently, the Combined Security Transition Command-Afghanistan [CSTC-A]) to provide equipment, services, construction, and other assistance to the Afghan National Army and the Afghan National Police, the two forces that form the Afghan Security Forces. Six DoD commands obligated the \$1.3 billion primarily using contracts with commercial vendors or military interdepartmental purchase requests that complied with appropriations law.

What We Recommend

We are making no recommendations.

Client Comments

No written response to this report was required, and none was received. Therefore, we are publishing this report in final form.



**Afghan National Army
Soldiers Perform Training Exercises**
(Photo Courtesy CSTC-A)



**Afghan National Police
Members Distribute Supplies**
(Photo Courtesy CSTC-A)

Recommendations Table

Client	Recommendations Requiring Comment
	None

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Introduction

Objectives

Our objective was to determine whether DoD obligated the Afghanistan Security Forces (ASF) Fund in accordance with legal provisions for assisting the ASF and with applicable appropriations law. See Appendix A for a discussion of the scope, methodology, and prior audit coverage.

Background

This report provides our results on the second phase of a three-phase audit of the ASF Fund. As of June 30, 2008, about \$15.3 billion had been appropriated for the fund through six public laws¹: Public Laws 109-13, 109-234, 109-289, 110-28, 110-161, and 110-252. For this audit, we reviewed obligations made using funds provided by three of these public laws² (Public Laws 109-13, 109-234, and 109-289) that together appropriated \$4.7 billion to the ASF Fund.

In the first phase of our audit [discussed in DoD Inspector General (IG) Report No. D-2008-012, “Distribution of Funds and the Validity of Obligations for the Management of the Afghanistan Security Forces Fund – Phase I,” November 5, 2007], we determined that DoD distributed \$4.7 billion of budget authority appropriated by Public Laws 109-13, 109-234, and 109-289 for the ASF Fund in compliance with provisions of the three public laws and appropriations law. Specifically, we compared amounts appropriated in each public law with the budget authority apportioned by the Office of Management and Budget. We then traced these amounts through DoD. The Under Secretary of Defense (Comptroller)/DoD Chief Financial Officer distributed appropriated amounts to the Office of the Assistant Secretary of the Army for Financial Management and Comptroller (the Army Comptroller) using funding-release memoranda. The Army Comptroller then issued funding authorization documents to the Defense Security Cooperation Agency (DSCA). With this funding authority, DSCA could commit, obligate, expend, and distribute financial resources.

For phase three, we plan to issue multiple reports that will address the accountability of weapons, real property construction, vehicles, and communication equipment provided to support the ASF.

¹ The six public laws are: Public Law 109-13, “Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005”; Public Law 109-234, “Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006”; Public Law 109-289, “Department of Defense Appropriations Act, 2007”; Public Law 110-28: “U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007”; Public Law 110-161, “Consolidated Appropriations Act, 2008”; and Public Law 110-252, “Supplemental Appropriations Act, 2008.”

² For the second phase, we reviewed the same three public laws as the first phase to maintain consistency.

ASF Support

U.S. Central Command (USCENTCOM) is responsible for working to promote regional development and cooperation among nations in Southwest Asia. Afghanistan is within the USCENTCOM area of responsibility. USCENTCOM, through its subordinate command, Combined Security Transition Command-Afghanistan (CSTC-A), is working with the government of Afghanistan to build up the two components of the ASF, the Afghan National Army (ANA) and the Afghan National Police (ANP). The CSTC-A mission, in partnership with the Islamic Republic of Afghanistan, is to plan, program and implement organizational, institutional and management reforms of the ASF “in order to develop a stable Afghanistan, strengthen the rule of law, and deter and defeat terrorism within its borders.” Current plans call for the ANA to be a light infantry force of up to 80,000 personnel to be fielded by the end of 2009. The ANA personnel will form 15 brigades including artillery, armor, commando, combat support, combat service support, and an air corps. The target for the ANP is a force of 82,000 personnel capable of operating countrywide. Approximately 75,000 ANP personnel are already fielded.

Pseudo-Foreign Military Sales Procedures

CSTC-A uses pseudo-Foreign Military Sales (FMS) procedures to support the ASF. These procedures differ from standard FMS procedures. FMS is a program administered by DSCA through which eligible foreign governments agree to use their funds to purchase defense articles, services, and training from the U.S. Government. The U.S. Government and foreign government sign a letter of offer and acceptance (LOA), or case, after reaching agreement on the type, cost, and other terms of the requested assistance. Each case has a unique case identifier for accounting purposes. FMS procedures for obtaining assistance using the ASF Fund are referred to as “pseudo” because the U.S. Government is not selling defense items to a foreign customer but instead to another U.S. Government entity.³ Preparation of a pseudo-LOA, however, generally follows FMS procedures. In addition, both FMS and pseudo-FMS procedures are available for requesting assistance from the Commands and agencies throughout the DoD FMS community.

The process for obtaining goods and services for the ASF begins when CSTC-A sends a memorandum of request to DSCA to fund specific assistance. DSCA reviews the request for consistency with the purpose for which the cited ASF funds were appropriated. DSCA then assigns the request to a DoD implementing agency.⁴ After the implementing

³ DSCA manages ASF funds after transferring them into the FMS Trust Fund. DSCA then collects an administrative fee (currently 3.8 percent of the total pseudo-FMS case value) to recover DoD expenses related to sales negotiations, case implementation, procurement, program control, computer programming, accounting, and budgeting. The authorization to transfer ASF funds into the FMS Trust Fund and for DSCA to collect administrative fees is under review in “Funds Appropriated for Afghanistan and Iraq Processed Through the Foreign Military Sales Trust Fund” (DoD IG Project No. D2007-D000FD-0198.000).

⁴ An implementing agency is the DoD Component assigned responsibility by DSCA to prepare the pseudo-LOA, establish the case, and provide overall management to ensure delivery of the materials or services set forth in the pseudo-LOA. The implementing agencies included in our audit were the U.S. Army Security Assistance Command, the U.S. Army Corps of Engineers, and the Air Force Security Assistance Center.

agency identifies the funding and other requirements to provide the assistance and DSCA approves the pseudo-LOA, DSCA notifies the Secretary of State. Upon Department of State agreement, DSCA directs the Defense Financial Accounting Service-Indianapolis to transfer funds from an ASF Fund appropriation into the FMS Trust Fund for the case.⁵ The implementing agency then establishes the case in applicable data systems and issues instructions for executing the case. Finally, the implementing agency and its subordinate commands execute the case and obligate ASF funds by awarding contracts to commercial vendors, obtaining materiel from stock, issuing military interdepartmental purchase requests (MIPR), or scheduling training. Each DoD command or agency includes a six-character pseudo-FMS case identifier in each obligating document. The case identifier indicates the public law providing the ASF funds, the DoD organization implementing the case, and a unique three-character case designator. For example, the case identifier “B2-B-AAA” means that the case will use ASF funds from Public Law 109-234 (“B2”) and that the Army (“B”) will implement the case. The “AAA” distinguishes case B2-B-AAA from all other Army cases using ASF funds from Public Law 109-234. Figure 1 on page 4 shows the interactions among organizations within our audit scope that processed CSTC-A requests for ASF assistance using pseudo-FMS procedures.

Review of Internal Controls

We identified no material internal control weaknesses in the procedures used by DoD to obligate ASF funds provided by Public Laws 109-13, 109-234, and 109-289.

⁵ A case may have many lines to individually track the funding, delivery terms, and other conditions applicable to several types of goods and services included in the request for assistance. For example, a request for vehicles could have separate lines for vehicles, spare parts, operator manuals, and other items or services.

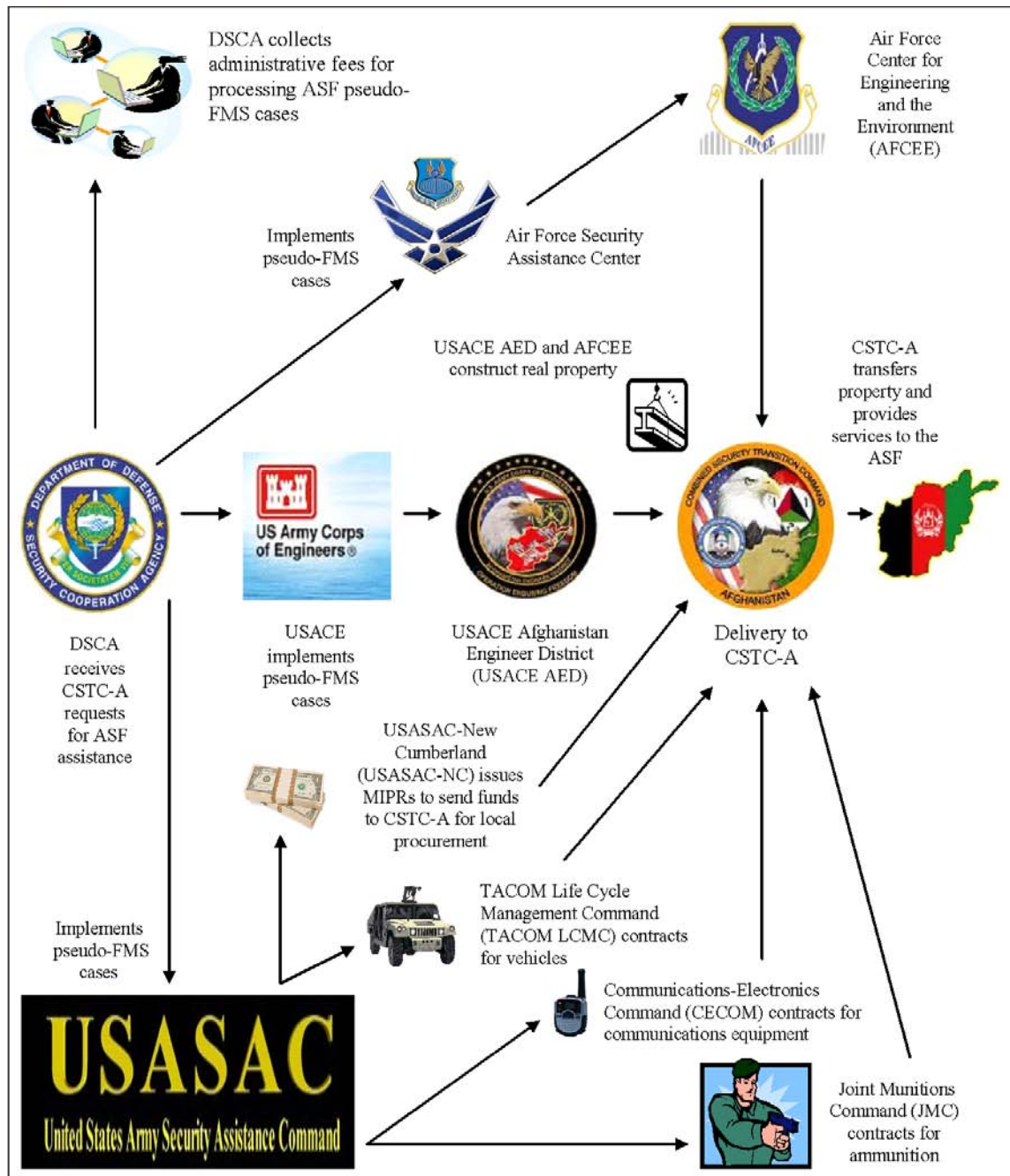


Figure 1. ASF Fund Pseudo-FMS Process

Acronyms

USACE AED U.S. Army Corps of Engineers Afghanistan Engineer District

Finding. Validity of Obligations Using the Afghanistan Security Forces Fund

DoD obligated \$1.3 billion in accordance with legal provisions to assist the ASF as found in Public Laws 109-13, 109-234, and 109-289. These three public laws make funds available to the Secretary of Defense or the Secretary's designee (currently, CSTC-A) to provide equipment, services, construction, and other assistance to the ANA and the ANP, the two forces that form the ASF. Six DoD⁶ commands obligated the \$1.3 billion primarily using contracts with commercial vendors or MIPRs that complied with appropriations law.

Public Laws Providing ASF Funds

Table 1 gives key information on the public laws we reviewed that provided ASF funds.

Table 1. Public Laws Providing ASF Funds and Included in Audit Scope

Number	109-13	109-234	109-289
Title	Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005	Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006	Department of Defense Appropriations Act, 2007
Signed	May 11, 2005	June 15, 2006	September 29, 2006
Availability Ended ¹	September 30, 2006	September 30, 2007	September 30, 2008
ASF Funds	\$1,285,000,000	\$1,908,133,000	\$1,500,000,000
Funds Obligated ²	\$ 916,456,159	\$1,163,323,419	\$1,046,914,243

¹ Funds are available for obligation beginning on the date the public law is signed and ending on the date specified by Congress in each public law.

² Amounts shown are ASF funds obligated, as of June 30, 2007, on open pseudo-FMS cases for goods and services exclusive of indirect surcharges, DSCA administrative fees, and ASF funds issued to other organizations.

These public laws provided ASF funds totaling \$4.7 billion. Not all of these funds provided assistance to the ASF using pseudo-FMS procedures. Congress directed the transfer of \$290 million of ASF funds from Public Law 109-13 to the Army to reimburse it for costs to assist the ASF. As of June 30, 2007, DSCA had issued \$437.5 million and \$7.0 million of ASF funds from Public Laws 109-234 and 109-289, respectively, to the Department of State and other organizations to pay for ANA and ANP salaries and

⁶ Air Force Center for Engineering and the Environment, Communications-Electronics Command, Joint Munitions Command, TACOM Life Cycle Management Command, U.S. Army Corps of Engineers, and U.S. Army Security Assistance Command-New Cumberland.

training. We did not review ASF funds issued to other organizations; we focused on ASF funds obligated using pseudo-FMS procedures to acquire assistance for the ASF.

Obligations Reviewed

We reviewed \$1.3 billion of the \$3.1 billion that DoD had obligated as of June 30, 2007, using pseudo-FMS procedures. These amounts excluded obligations for indirect surcharges such as packaging and transportation costs, as well as administrative fees charged by DSCA. Six DoD commands used 86 documents (contracts, delivery orders, or MIPRs) to obligate the \$1.3 billion in ASF funds shown in Figure 2.

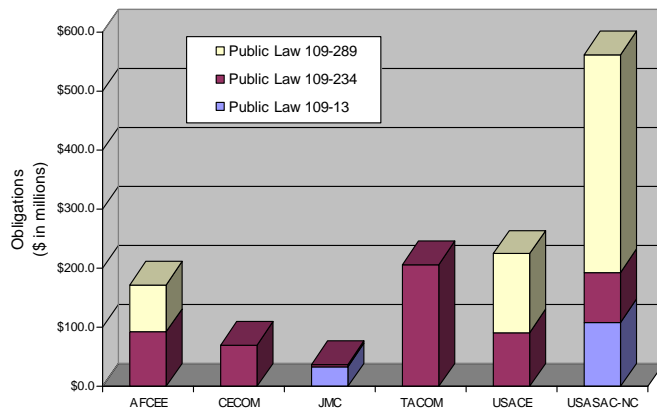


Figure 2. ASF Funds Obligated by DoD Commands

Except for the U.S. Army Security Assistance Command-New Cumberland (USASAC-NC) and the Joint Munitions Command (JMC), the DoD commands in Figure 2 obligated ASF funds using contracts and delivery orders. USASAC-NC primarily used MIPRs to provide funds for local procurement of goods and services by CSTC-A personnel in Kabul, Afghanistan. JMC used MIPRs to acquire ammunition for the ANA.

Legal Provisions for Assisting the ASF

Public Laws 109-13, 109-234, and 109-289 each contain provisions describing the assistance approved for the ASF using ASF funds. The provisions among all three public laws are nearly identical. As an example, the assistance provisions from Public Law 109-289 are:

Provided, That such funds shall be available to the Secretary of Defense, notwithstanding any other provision of law, for the purpose of allowing the Commander, Office of Security Cooperation—Afghanistan,⁷ or the Secretary’s designee,⁸ to provide assistance, with the concurrence of the Secretary of State, to the security forces of Afghanistan, including the provision of equipment, supplies, services, training, facility and infrastructure repair, renovation, and construction, and funding:

Provided further, That the authority to provide assistance under this heading is in addition to any other authority to provide assistance to foreign nations . . .

⁷ Public Law 109-13 states, “Commander, Combined Forces Command-Afghanistan,” whereas Public Laws 109-234 and 109-289 state, “Commander, Office of Security Cooperation-Afghanistan.”

⁸ Currently, the Secretary’s designee is the Combined Security Transition Command-Afghanistan.

The Government Accountability Office (GAO), Office of the General Counsel, *Principles of Federal Appropriations Law*, Third Edition, volume I, January 2004, chapter 2, GAO-04-261SP, states that the primary source of information for interpreting the text of a public law is the conference report supporting it. We compared the description of the ASF Fund in each of the three public laws with its respective conference report and found no differences. Accordingly, we used the text of the assistance provisions of the three public laws to determine whether the obligating documents we sampled complied with the legal provisions for supporting the ASF.

Financial and Activity Plans

A DoD financial and activity plan provides a link between the text of each public law and more specific assistance intended with ASF funds. USCENTCOM organizations that manage ASF funds in Afghanistan initially prepare financial and activity plans for the use of funds appropriated for the ASF Fund. The plans are prepared for each appropriation providing ASF funds and changed as the mission in Afghanistan dictates. DoD allocates funds to three budget activity groups: defense forces (the ANA), interior forces (the ANP), and detainee operations. DoD further allocates funds within each budget activity group to four sub-activity groups for equipment and transportation, infrastructure, sustainment, and training and education. The completed financial and activity plans are coordinated with various DoD organizations and the Department of State for approval. The three public laws require Secretary of State agreement with the plans. Table 2 shows an excerpt from a DoD financial and activity plan dated October 6, 2006, for funds appropriated through Public Law 109-234 and intended for ANP use.

Table 2. DoD Financial and Activity Plan for the ANP Budget Activity Group

Sub-Activity Group	Planned Use for ASF Funds
Equipment and Transportation	To include crowd control equipment, tactical communication, lightweight tactical vehicles, vehicle parts, equipment transportation, computer workstations, very high frequency (VHF) mobile radios, hardware and software network support, satellite modems, high frequency (HF) base stations
Infrastructure	To include border police brigade headquarters, border police battalion headquarters, uniform police provincial headquarters, quick reaction police battalion headquarters, regional headquarters, national police command center
Sustainment	To include weapons, ammunition, maintenance and minor repairs on facilities, medical consumables, vehicle maintenance, salaries, weapons maintenance
Training and Education	To include basic police training, tactical training initiative, provincial police training, field police training, criminal investigation training, instructor training, tactical driving course training, mentors, operational maintenance expenses for regional training centers and the central training center

We considered the content in DoD financial and activity plans when determining whether the obligations made with ASF funds complied with the legal provisions to assist the ASF as stated in Public Laws 109-13, 109-234, and 109-289.

Obligational Authority

DSCA memorandum, “Appropriate Level of Obligational Authority (OA) Control,” July 20, 1999, states that, at a minimum, obligational authority control of FMS cases should be maintained at the line level by all parties to the LOA. This guidance also applies to pseudo-FMS cases. Management of obligational authority at the line level should help prevent adverse financial conditions as identified in the DoD Financial Management Regulation (FMR). One type of adverse financial condition occurs when total obligations exceed obligational authority at case or line levels. The LOA provided the obligational authority for each of our sample line items.

The Army and Air Force have separate procedures to comply with obligational authority limits in the LOA. The Army uses its Program Budget Accounting System to establish obligational authority at the pseudo-FMS case level. We reviewed the obligational authority for 27 Army sample lines that were part of 14 pseudo-FMS cases. The 27 Army sample lines had 90.9 percent (\$1.1 billion) of the total recorded obligations for the 14 cases as of June 30, 2007. For each of our five Air Force sample lines, the Air Force Security Assistance Center provided obligation authority to the Air Force Center for Engineering and the Environment by issuing an Air Force Form 616. This form provides a not-to-exceed estimate of authority to incur obligations for a specified purpose and time frame.

We compared the amounts obligated for each sample case line to the amounts of obligational authority in the LOA, Program Budget Accounting System, and Air Force Forms 616, as appropriate. We found that the cumulative obligations applicable to each case line and examined during our review were closely comparable⁹ to the obligational authority in the LOA. In addition, the cumulative obligations examined for the 27 Army sample lines, as well as each of the 5 Air Force case lines, did not exceed thresholds established by the Army and Air Force, respectively.

⁹ For case Y8-B-ABJ under Public Law 109-13, we found that the total obligations recorded for Line 001 exceeded the LOA obligational authority by about \$34 million, an amount equaling the obligational authority established previously for Line 002. USASAC-NC had recorded all obligations for Y8-B-ABJ against Line 001. After we informed USASAC-NC of this, DSCA and USASAC-NC immediately implemented an amendment to the LOA for Y8-B-ABJ to realign the \$34 million from Line 002 to Line 001. USASAC-NC officials explained that administrative error resulted in incorrectly recording the obligations. We confirmed that the total obligational authority for case Y8-B-ABJ was not exceeded by comparing the total obligations recorded for case Y8-B-ABJ to the obligational authority established for Line 001 in the revised LOA, and with the obligational authority shown in the Program Budget Accounting System for case Y8-B-ABJ. We agree with this corrective action.

Guidance for Obligating Funds

The United States Code (U.S.C.), GAO, and the DoD FMR provide guidance concerning obligations and the documentary evidence required. See Appendix B for guidance on obligating Government funds. The U.S.C., Defense Federal Acquisition Regulation Supplement, and the DoD FMR provide guidance concerning MIPRs. See Appendix C for the guidance concerning MIPRs.

Light Tactical Vehicles for the ANP

To illustrate our approach for reviewing ASF Fund obligations to acquire equipment, we describe below our review of obligations for pseudo-FMS case B2-B-AAA, Line 001.

ASF Funds Provided to Order Vehicles

DSCA created the LOA for pseudo-FMS case B2-B-AAA on August 31, 2006, using ASF funds from Public Law 109-234. Line 001 of the case provided funds of \$54.1 million to acquire 2,325 4-door light tactical vehicles (pickup trucks) for the ANP. CSTC-A requested two amendments to the LOA (most recently on January 12, 2007) to increase the ASF funds on Line 001 to \$149.4 million to purchase a total of 6,442 vehicles. The obligational authority to reimburse the cost of the vehicles was \$146.9 million while the remaining \$2.5 million covered indirect DSCA surcharges.

TACOM Life Cycle Management Command Obligates the ASF Funds

To acquire the 6,442 vehicles, TACOM Life Cycle Management Command (TACOM LCMC) awarded four delivery orders under contract W56HZV-06-D-G002 to Global Fleet Sales, Inc. Table 3 provides details of the four delivery orders.

**Table 3. TACOM LCMC Delivery Orders for Light Tactical Vehicles
Awarded Under Contract W56HZV-06-D-G002**

Delivery Order No.	Contract Line Item No.	Award Date	Vehicles Ordered	Delivery Order Amount
3	0211AA	September 27, 2006	2,325	\$ 53,010,000
3	0211AB	September 27, 2006	10	228,000
9	0211AA	November 15, 2006	4,036	92,020,800
10	0211AA	November 20, 2006	7	159,600
13	0211AC	February 6, 2007	<u>64</u>	<u>1,459,200</u>
Total			6,442	\$146,877,600

TACOM LCMC properly obligated \$146.9 million of ASF funds for the vehicles. In addition, the vehicles purchased with the delivery orders complied with the legal provision of Public Law 109-234 to assist the ASF because each delivery order:

- was a written, binding agreement with specific terms between two entities (TACOM LCMC and Global Fleet Sales, Inc.) that adequately identified the vehicles to be purchased;

- met the legal provisions for providing equipment to the ASF because light tactical vehicles are a type of equipment permitted by Public Law 109-234. In addition, a DoD Financial and Activity Plan also allowed for the purchase of lightweight tactical vehicles. (Refer to the Equipment and Transportation Sub-Activity Group in Table 2);
- contained the correct citation to obtain ASF funds appropriated under Public Law 109-234 and held in the FMS Trust Fund;
- was awarded before September 30, 2007, the end of the period of availability for Public Law 109-234; and,
- included shipping information indicating the vehicles were to be delivered to CSTC-A in Kabul, Afghanistan.

The light tactical vehicle purchases were in accordance with the Antideficiency Act that requires that funds cannot be obligated before the date an appropriation is made or in an amount that would exceed the total appropriation. Each of the award dates for the delivery orders in Table 2 falls after June 15, 2006, the date Public Law 109-234 was signed. The \$146.9 million of obligations on B2-B-AAA, Line 001, did not exceed the amount of obligation authority for the vehicles of \$146.9 million.

Public Law 109-234 provided the ASF funds to acquire the 6,442 vehicles. Congress designated the amount appropriated in the ASF Fund in Public Law 109-234 as an emergency requirement. In addition, providing the vehicles to the ANP should advance U.S. National Security goals of helping Afghanistan become stable, democratic, and free of terrorists. Figure 3 shows some of the 4-door light pickup trucks requested by CSTC-A, acquired by TACOM LCMC, and awaiting delivery to the ANP.



Figure 3. Light Tactical Vehicles Prepared for Delivery to the ANP in Kabul, Afghanistan

Conclusion

We determined that DoD obligated \$1.3 billion in accordance with legal provisions to assist the ASF as specified in Public Laws 109-13, 109-234, and 109-289. We also found that the 86 documents that DoD used to obligate the \$1.3 billion were acceptable for obligating the ASF funds and did not violate the Antideficiency Act. The six DoD commands obligated \$1.3 billion to obtain assistance including light tactical vehicles; upgrades to the Kabul International Airport; design and construction of police headquarters facilities; purchase of hand-held radios, ammunition, and general transport trucks; and funds for local procurement. All of these goods and services met the criteria for assistance approved for the ASF.

Appendix A. Scope and Methodology

We conducted this performance audit from August 2007 through August 2008, in accordance with generally accepted government auditing standards except for our review of MIPRs issued by USASAC-NC as discussed below. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We visited DSCA to understand pseudo-FMS procedures and ASF funds obligated under Public Laws 109-13, 109-234, and 109-289. We also contacted officials at the U.S. Army Corps of Engineers (USACE) (including USACE representatives in the U.S. and Afghanistan), the U.S. Army TACOM LCMC, the U.S. Army Communications-Electronics Command (CECOM), USASAC-NC, JMC, and the U.S. Air Force Center for Engineering and the Environment (AFCEE) to obtain the documents they used to obligate ASF funds related to our sample items.

We examined the ASF Fund descriptions in Public Laws 109-13, 109-234, and 109-289; conference reports; and financial and activity plans issued by the Under Secretary of Defense (Comptroller)/DoD Chief Financial Officer to understand the assistance permitted to the ASF. We reviewed LOAs, obligating documents (contract awards, delivery orders, and MIPRs), and documents that established obligational authority.

We used the Defense Integrated Financial System to obtain a list of the amount of obligations recorded for each line of all open and closed pseudo-FMS cases as of June 30, 2007, for Public Laws 109-13, 109-234, and 109-289. Using this list, the Department of Defense Office of Inspector General Quantitative Methods Directorate provided us with a statistical sample of 100 pseudo-FMS case lines for review. Due to time and audit resource constraints, we reviewed a judgmental sample of 32 open case lines (within 16 pseudo-FMS cases) with obligation balances ranging from \$5,282 to \$151,375,712 and taken from the statistical sample. We selected 27 lines for the Army and 5 for the Air Force that were executed among 5 Army and 1 Air Force commands. We examined the LOA for each sampled case to understand the requested assistance and determine the related obligational authority. We requested each Army and Air Force command executing line items in our sample to provide the documents (contracts, delivery orders, or MIPRs) supporting the obligated amounts. Finally, we evaluated the 86 documents provided to determine whether the documents were prepared in compliance with criteria in the three public laws, the U.S.C., the DoD FMR, the Defense Federal Acquisition Regulation Supplement, and policy and regulations issued by DSCA, the Army, and the Air Force. In total, the 86 documents obligated \$1.3 billion of ASF funds.

The audit scope for reviewing MIPRs issued by USASAC-NC was limited to a review of each MIPR and its acceptance by a DoD acquiring organization such as CSTC-A for local procurement. We did not review obligating documents issued by the acquiring

organizations, including those issued by CSTC-A personnel in Kabul, Afghanistan, for local procurement items because of time and audit resource constraints.

Use of Computer-Processed Data

We used the Defense Integrated Financial System to obtain the amount of obligations recorded for each line of all open and closed pseudo-FMS cases as of June 30, 2007, for Public Laws 109-13, 109-234, and 109-289. We obtained the amount of obligational authority for Army pseudo-FMS cases from the Program Budget Accounting System. We did not perform any tests of the reliability of the computer-processed data.

Use of Technical Assistance

Statisticians in the Quantitative Methods Directorate of Policy and Oversight, Department of Defense Office of Inspector General provided assistance in selecting a sample of pseudo-FMS case lines for review.

Prior Coverage

During the last 5 years, GAO, the DoD IG, and the Air Force Audit Agency have issued five reports discussing accountability for goods and services provided to the ASF. Unrestricted GAO reports can be accessed over the Internet at <http://www.gao.gov>. Unrestricted DoD IG reports can be accessed at <http://www.dodig.mil/audit/reports>. Unrestricted Air Force Audit Agency reports can be accessed at <https://www.affa.hq.af.mil>.

GAO

GAO Report No. GAO-08-661, “Afghanistan Security, Further Congressional Action May Be Needed to Ensure Completion of a Detailed Plan to Develop and Sustain Capable Afghan National Security Forces,” June 2008

GAO Report No. GAO-05-575, “Afghanistan Security: Efforts to Establish Army and Police Have Made Progress, but Future Plans Need to Be Better Defined,” June 2005

DoD IG

DoD IG Report No. D-2009-031, “Afghanistan Security Forces Fund Phase III-Air Force Real Property Accountability,” December 29, 2008

DoD IG Report No. D-2008-012, “Distribution of Funds and Validity of Obligations for the Management of the Afghanistan Security Forces Fund – Phase I,” November 5, 2007

Air Force Audit Agency

Air Force Audit Agency Report No. F2005-0011-FB1000, “Global War on Terrorism Funds Management,” June 2005

Appendix B. Obligations Guidance

Several publications provide guidance concerning obligations, documentary evidence for obligations, contracts, the Antideficiency Act, and the Bona Fide Needs Rule.

Obligations

The DoD Financial Management Regulation (FMR), volume 1, “Definitions,” December 2001, states that obligations are:

Amounts of orders placed, contracts awarded, services received, and similar transactions during an accounting period that will require payment during the same, or a future, period.

The Government Accountability Office (GAO), Office of the General Counsel, *Principles of Federal Appropriations Law*, Third Edition, volume II, February 2006, chapter 7, GAO-06-382SP (*Principles*),¹ states:

. . . because of the immense variety of transactions in which the government is involved, GAO has defined “obligation” only in the most general terms and has instead analyzed on a case-by-case basis the nature of the particular transaction at issue to determine whether an obligation has been incurred. . . . The most one finds in the decisions are general statements referring to an obligation in such terms as “a definite commitment which creates a legal liability of the Government for the payment of appropriated funds for goods and services ordered or received.”

Documentary Evidence for Obligations

Section 1501, title 31, United States Code (31 U.S.C. 1501) (2005), requires documentary evidence for Government obligations. According to 31 U.S.C. 1501(a)(1)(A) and 31 U.S.C. 1501(a)(1)(B):

- (a) An amount shall be recorded as an obligation of the United States Government only when supported by documentary evidence of -
 - (1) a binding agreement between an agency and another person (including an agency) that is -
 - (A) in writing, in a way and form, and for a purpose authorized by law; and
 - (B) executed before the end of the period of availability for obligation of the appropriation or fund used for specific goods to be delivered, real property to be bought or leased, or work or service to be provided;

¹ The Comptroller General of the United States, GAO, issues decisions in various areas of Federal law. GAO prepared the *Principles* to present a basic reference work covering those areas of law in which the Comptroller General renders decisions (such as obligations).

DoD FMR, volume 14, chapter 1, “Administrative Control of Appropriations,” October 2002, paragraph 010207, states:

An amount shall be recorded as an obligation or expenditure when incurred as supported by documentary evidence of the occurrence of the event.

Contracts

DoD FMR, volume 1, “Definitions,” December 2001, states that contracts are:

Any enforceable agreement, including rental and lease agreements and purchase orders, between an Agency and a business concern for the acquisition of property or services.

The *Principles* states, “An agreement must be legally binding (offer, acceptance, and consideration made by an authorized official).” As stated in a 1991 decision:

The primary purpose of [31 U.S.C.] section 1501(a)(1) is to ‘require that there be an *offer* and *acceptance* imposing liability on both parties.’ 39 Comp. Gen. 829, 831 (1960). Hence the government may record an obligation under section 1501 only upon evidence that both parties to the contract willfully express the intent to be bound.”

Antideficiency Act

Section 1341, title 31, United States Code (31 U.S.C. 1341) (2006), “Limitations on Expending and Obligating Amounts,” provides limitations on expending and obligating funds. According to 31 U.S.C. 1341(a)(1)(B), “An officer or employee of the United States Government . . . may not:”

involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law;

Further, 31 U.S.C. 1342 (2006), “Limitation on Voluntary Services,” states:

An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property. This section does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without legal liability of the United States Government. As used in this section, the term “emergencies involving the safety of human life or the protection of property” does not include ongoing, regular functions of government, the suspension of which would not imminently threaten the safety of human life or the protection of property.

Finally, according to 31 U.S.C. 1517(a) (2006), “Prohibited Obligations and Expenditures,”

An officer or employee of the United States Government or of the District of Columbia government may not make or authorize an expenditure or obligation exceeding -

- (1) an apportionment; or
- (2) the amount permitted by regulations prescribed under section 1514(a) of this title.²

Bona Fide Needs Rule

Section 1502(a), title 31, United States Code (31 U.S.C. 1502) (2006), “Balances Available,” establishes the Bona Fide Needs Rule. According to 31 U.S.C. 1502(a):

(a) The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability and obligated consistent with section 1501 of this title. However, the appropriation or fund is not available for expenditure for a period beyond the period otherwise authorized by law.

² According to 31 U.S.C. 1514(a): “(a) The official having administrative control of an appropriation available to the legislative branch, the judicial branch, the United States International Trade Commission, or the District of Columbia government, and, subject to the approval of the President, the head of each executive agency (except the Commission) shall prescribe by regulation a system of administrative control not inconsistent with accounting procedures prescribed under law. The system shall be designed to -

- (1) restrict obligations or expenditures from each appropriation to the amount of apportionments or reappropriations of the appropriation; and
- (2) enable the official or the head of the executive agency to fix responsibility for an obligation or expenditure exceeding an apportionment or reappropriation.”

Appendix C. Military Interdepartmental Purchase Requests

A Military Interdepartmental Purchase Request (MIPR) is an order issued by a DoD Component to the same or another DoD Component to procure goods, services, or equipment. A MIPR may be an Economy Act order.

Economy Act Order

Goods and services may be procured from other Federal agencies under the Economy Act, sections 1535 and 1536, title 31, United States Code, or other statutory authorities. Section 1535, title 31, United States Code (31 U.S.C. 1535) (2006), provides the legal authority to procure goods and services from other Federal agencies. According to 31 U.S.C. 1535(a)(1) through 31 U.S.C. 1535(a)(4):

- (a) The head of an agency or major organizational unit within an agency may place an order with a major organizational unit within the same agency or another agency for goods or services if -
 - (1) amounts are available;
 - (2) the head of the ordering agency or unit decides the order is in the best interest of the United States Government;
 - (3) the agency or unit to fill the order is able to provide or get by contract the ordered goods or services; and
 - (4) the head of the agency decides ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

According to 31 U.S.C. 1535(d)(1) and 31 U.S.C. 1535(d)(2):

- (d) An order placed or agreement made under this section obligates an appropriation of the ordering agency or unit. The amount obligated is deobligated to the extent that the agency or unit filling the order has not incurred obligations, before the end of the period of availability of the appropriation, in -
 - (1) providing goods or services; or
 - (2) making an authorized contract with another person to provide the requested goods or services.

DoD FMR, volume 11A, chapter 3, "Economy Act Orders," February 2008, paragraph 030404, states:

An Economy Act order obligates the applicable appropriation of the requesting agency or unit upon acceptance of the order by the servicing agency. The entire amount of a reimbursable order should be obligated by the requesting agency when the order is accepted.

Military Interdepartmental Purchase Request

DoD FMR, volume 11A, chapter 3, “Economy Act Orders,” February 2008, paragraph 030102 and paragraph 030501, state, respectively:

Within the Department, an activity within a DoD Component may place an order with another activity within the same DoD Component, another DoD Component or with another federal agency for goods or services.

Typically, between DoD Components, a DD Form 448, MIPR is used to place the order. A DD Form 448-1,¹ “Acceptance of MIPR,” is used to show acceptance.

Procedures for Using Military Interdepartmental Purchase Requests

The Defense Federal Acquisition Regulation Supplement: Procedures, Guidance and Information, Subpart 208.70, “Coordinated Acquisition,” paragraphs 208.7004-1 and 208.7004-2 (revised July 21, 2008) discuss procedures for using MIPRs.

Requiring departments send their requirements to acquiring departments on a MIPR. The MIPR is the authority for the acquiring department to acquire the supplies or services on behalf of the requiring department. The acquiring department is authorized to create obligations against the funds cited in a MIPR without further referral to the requiring department.

The acquiring department has no responsibility to determine the validity of a stated requirement in an approved MIPR, but it should bring apparent errors to the attention of the requiring department. Changes that affect the contents of the MIPR must be processed as a MIPR amendment regardless of the status of the MIPR. The requiring department must submit requirements for additional line items of supplies or services not provided for in the original MIPR as a new MIPR.

Acquiring departments formally accept a MIPR using an Acceptance of MIPR form and must accept the MIPRs in writing before the funds expire.

Methods of Funding²

The Defense Federal Acquisition Regulation Supplement: Procedures, Guidance and Information, Subpart 208.70, “Coordinated Acquisition,” paragraph 208.7004-2 (revised July 21, 2008), states:

¹ A DD Form 448-2 is now used to show acceptance of a MIPR.

² We did not review the authorization for DSCA to transfer ASF funds into the FMS Trust Fund. This practice is under review in “Funds Appropriated for Afghanistan and Iraq Processed Through the Foreign Military Sales Trust Fund” (DoD IG Project No. D2007-D000FD-0198.000).

The acquiring department in accepting a MIPR will determine whether to use Category I (reimbursable funds citation) or Category II (direct funds citation) methods of funding.

Category I or Reimbursable Funds Citation Method of Funding

DoD may use the reimbursable funds citation for various purposes including deliveries from existing inventories or existing contracts of the acquiring department. In this case, the Acceptance of MIPR form is the authority for the requiring department to record the obligation of funds.

Category II or Direct Funds Citation Method of Funding

DoD may use the direct funds citation in circumstances other than those applicable to the reimbursable funds citation and results in citation of the requiring department's funds and the MIPR number in the resultant contract. In this case, the conformed copy of the contract is the authority to record the obligation.



Inspector General Department *of* Defense

